

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§
	§ No. 64, 2009
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
PERRY PHELPS, MICHAEL	§ C.A. No. S08M-12-018
COSTELLO, JAMES	§
SCARBOROUGH, TONYA	§
SMITH, MICHAEL LITTLE,	§
CHRIS SENATO, and MICHAEL	§
KNIGHT,	§
	§
Respondents Below-	§
Appellees.	§

Submitted: June 12, 2009

Decided: July 16, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justice

ORDER

This 16th day of July 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, James Arthur Biggins, filed an appeal from the Superior Court’s January 7, 2009 order denying his motion for *in forma pauperis* (“IFP”) status and ordering dismissal of his case unless he paid the filing and sheriff’s fees by a date certain and the Superior Court’s January 22, 2009 order

denying his motion for reargument. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in December 2008, Biggins filed what he entitled a “motion for writ of mandamus” in the Superior Court and a motion to proceed IFP. On January 7, 2009, the Superior Court denied Biggins’ IFP petition because he had intentionally omitted statutorily-required information from his supporting affidavit.¹ The Superior Court ordered Biggins to submit the filing fee in the amount of \$185.00 and the sheriff’s fee in the amount of \$210.00 on or before February 9, 2009 or his petition would be dismissed. Biggins failed to pay the fees, as ordered. On January 15, 2009, Biggins filed a motion for reargument of the Superior Court’s January 7, 2009 order. The Superior Court subsequently denied the motion as untimely.

(3) In this appeal, Biggins claims that the Superior Court abused its discretion a) by denying his IFP petition and dismissing his case; and b) by denying his motion for reargument.

(4) We find no abuse of discretion on the part of the Superior Court in denying Biggins’ IFP petition. Moreover, once Biggins’ IFP petition was denied,

¹ Del. Code Ann. tit. 10, § 8802(b) and (c). The Superior Court also denied the motion pursuant to Del. Code Ann. tit. 10, § 8804(f).

it was his obligation to pay the court filing fees.² When Biggins failed to pay the fees, the Superior Court acted within its discretion in dismissing his case.

(5) We, likewise, conclude that the Superior Court properly denied Biggins' motion for reargument. The record reflects that any motion for reargument of the Superior Court's January 7, 2009 order was due on or before January 14, 2009. Biggins' motion was filed on January 15, 2009, and, therefore, was properly denied as untimely.³ For all of the above reasons, the Superior Court's judgment must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's judgment is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

² Super. Ct. Civ. R. 3(e).

³ Super. Ct. Civ. R. 59(e) and 6.